

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 740 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

HAJI AMAD JANGIYA

Versus

SU DIVISIONAL MAGISTRATE

Appearance:

1. Special Criminal Application No. 740 of 2002
MR FB BRAHMBHATT for Petitioner No. 1
RULE SERVED for Respondent No. 1
RULE NOT RECD BACK for Respondent No. 2
MR RC KODEKAR, APP for Respondent No. 3
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CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 23/07/2003

ORAL JUDGEMENT

This petition under Article 226 of the

Constitution of India has been filed for quashing the order dated 17-6-2002 passed by the Sub Divisional Magistrate, Anjar as also the order dated 19-8-2002 passed by the Deputy Secretary, Home Department, Sachivalaya, Gandhinagar.

2. The facts in short are that a notice was issued to the petitioner on 25-10-2000 to show cause as to why he may not be deported under Sec.56 of the Bombay Police Act for the term of two years from the limits of District Kutch and adjoining districts Rajkot, Banaskantha and Surendranagar for the reasons mentioned therein. Thereafter, order of externment was passed on 17-6-2002 i.e. after a period of 18 months. It is the case of the petitioner that he has not been given any opportunity of hearing to defend his case. An appeal preferred before the appellate authority was dismissed on 19-8-2002 which is giving rise to the present petition.

3. Heard learned advocate for the petitioner and learned APP for the State.

4. Learned advocate for the petitioner has raised several contentions in his petition. It is contended by him that last offence registered against the externnee was on 31-1-2000. However show cause notice was issued on 25-10-2000 externing him from the aforesaid districts and thereafter after 18 months, order of externment was passed. In this connection, he has relied upon the decision of a Division Bench of this Court (Coram: P.R.Gokulakrishnan & R.J.Shah, CJ and J) in the case of Chothmal Sagansingh Rajput Vs. State of Gujarat and Others, reported in 1988(2) G.L.H. page 439 wherein it was held at head note as under:

"Bombay Police Act,
1951--S.56--Externment-Unexplained delay in
passing the externment order after closing the
arguments in respect of the show cause
notice--Delay of nearly five months--Particulars
as regards lapse of time not given--Concerned
Police Officer had generally stated that he was
busy in various other duties on a particular
day--Only vague and prototype assertions made as
regards works performed by him on each day--It
cannot substantiate the genuineness of time taken
and delay caused--externment order quashed."

He has also contended that the ground which has been shown in the order is vague and authority has not

considered the defence of the petitioner. He has also taken me through show cause notice and the order passed by both the authorities. He has relied upon the case of (Shri) Hussainmiya @ Jago Razakmiya Qadri Vs. State of Gujarat and Ors., 1999(2) G.L.H. 786 wherein it has been held in para 5 as under:

"An order for externment has the necessary consequence of restricting the movement of a citizen. This restriction can be imposed only by proceeding in accordance with law. The law on the subject is that prior to the passing of an order of externment show-cause notice should be issued disclosing specific grounds on which an order for externment is proposed to be passed. If vague grounds are given in the show-cause notice, it will certainly prejudice the petitioner in effectively raising his defence. The next stage is that if, after the receipt of the show-cause notice, the cause is shown and the defence is tendered by the proposed externee, the same is bound to be considered objectively by the externing authority as well as by the Appellate Authority. No doubt, these authorities are not exercising functions of judicial authorities while passing these orders but they are certainly acting as quasi-judicial authorities, hence these orders should not be purely subjective, rather objectivity should be reflected in these orders. In case evidence is adduced by the two sides it should be objectively considered and reasons should be given why evidence of one side is believed and the evidence of the other side is not believed. If the orders are passed after complying with these formalities, then certainly it can be said that procedural safeguards were observed by the two authorities. In all events, violation of these safeguards will certainly render the impugned orders invalid."

5. It appears that the petitioner has not been given any opportunity of hearing to defend his case and only vague grounds are given in the show-cause notice. Moreover, the delay of 18 months from the date of issuing of show-cause notice to the date of passing the externment order could not be explained by the respondents satisfactorily. Hence, in view of the above reported judgments relied upon by the learned counsel for the petitioner, the orders require interference.

6. In view of the above, the petition is allowed.

Order dated 17-6-2002 passed by the Sub Divisional Magistrate, Anjar as also the order dated 19-8-2002 passed by the Deputy Secretary, Home Department, Sachivalaya, Gandhinagar, against the externee are quashed and set aside. Direct service is permitted.

(R.P.DHOLAKIA, J.)

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